

VZCZCXRO0735  
RR RUEHTRO  
DE RUCNDT #0968/01 3111938  
ZNR UUUUU ZZH  
R 071938Z NOV 07  
FM USMISSION USUN NEW YORK  
TO RUEHC/SECSTATE WASHDC 2983  
INFO RUEHUJA/AMEMBASSY ABUJA 0440  
RUEHDS/AMEMBASSY ADDIS ABABA 1513  
RUEHTH/AMEMBASSY ATHENS 1440  
RUEHBJ/AMEMBASSY BEIJING 0998  
RUEHRL/AMEMBASSY BERLIN 0880  
RUEHBU/AMEMBASSY BUENOS AIRES 0574  
RUEHBY/AMEMBASSY CANBERRA 1729  
RUEHCV/AMEMBASSY CARACAS 0335  
RUEHCP/AMEMBASSY COPENHAGEN 0243  
RUEHFN/AMEMBASSY FREETOWN 1064  
RUEHGT/AMEMBASSY GUATEMALA 0175  
RUEHHE/AMEMBASSY HELSINKI 0499  
RUEHIL/AMEMBASSY ISLAMABAD 1681  
RUEHJA/AMEMBASSY JAKARTA 1614  
RUEHKL/AMEMBASSY KUALA LUMPUR 0656  
RUEHLI/AMEMBASSY LISBON 0530  
RUEHLO/AMEMBASSY LONDON 1198  
RUEHME/AMEMBASSY MEXICO 0617  
RUEHMO/AMEMBASSY MOSCOW 1084  
RUEHNE/AMEMBASSY NEW DELHI 1923  
RUEHNC/AMEMBASSY NICOSIA 1071  
RUEHNY/AMEMBASSY OSLO 0778  
RUEHOT/AMEMBASSY OTTAWA 0940  
RUEHFR/AMEMBASSY PARIS 1085  
RUEHRK/AMEMBASSY REYKJAVIK 0133  
RUEHRO/AMEMBASSY ROME 0946  
RUEHSG/AMEMBASSY SANTIAGO 0206  
RUEHUL/AMEMBASSY SEOUL 0849  
RUEHSM/AMEMBASSY STOCKHOLM 0525  
RUEHKO/AMEMBASSY TOKYO 8364  
RUEHTRO/AMEMBASSY TRIPOLI  
RUEHVI/AMEMBASSY VIENNA 0490  
RUEHWR/AMEMBASSY WARSAW 3233  
RUEHWL/AMEMBASSY WELLINGTON 2772  
RUEHUB/USINT HAVANA 0221  
RUEHUNV/USMISSION UNVIE VIENNA 0700  
RUEHGV/USMISSION GENEVA 2928

UNCLAS SECTION 01 OF 03 USUN NEW YORK 000968

SIPDIS

SIPDIS

E.O. 12958: N/A

TAGS: [UNGA](#) [UNGA](#)

SUBJECT: UNGA: SIXTH COMMITTEE DEBATES ILC ARTICLES ON  
TRANSBOUNDARY HARM AND RESPONSIBILITY OF STATES

11. SUMMARY: During the October 23 Sixth Committee debate, delegations delivered statements on the consideration of prevention of transboundary harm from harmful activities and allocation of loss in the case of such harm, and the responsibility of States for internationally wrongful acts. The key theme of the debate on both agenda items was whether the draft articles and principles prepared by the International Law Commission on these topics should be negotiated as conventions, or remain as non-binding recommendations to States. On the matter of transboundary harm, the majority of delegations were opposed to a convention and preferred to give more thought to the final form of the draft articles and principles and their use in State practice. Opinions regarding the draft articles on State responsibility, however, were more divided. Twelve delegations said that the time was "ripe" for the codification of the draft articles in the form of a convention. Fifteen representatives spoke against the negotiation of a convention; however, some of these delegations did not rule out the possibility of revisiting the need for a convention in the future. END SUMMARY.

-----  
Transboundary Harm  
-----

¶2. During the October 23 debate on transboundary harm from harmful activities and allocation of loss in the case of such harm, the following delegations delivered statements to the Sixth Committee: New Zealand (on behalf of Canada, Australia and New Zealand (CANZ)); Norway (on behalf of Denmark, Finland, Iceland and Sweden); Portugal; China; Argentina; the United States; the United Kingdom; Mexico; Japan; Malaysia; Pakistan; the Russian Federation; Venezuela; Austria; and Indonesia.

¶3. Sixth Committee Chairman Alexei Tulbure (Moldova) opened the discussion by reminding delegates that the task of the Committee in the current session was to decide on how to move forward with the International Law Commission's (ILC) draft articles on transboundary harm and draft principles on the allocation of loss in the case of such harm. (NOTE: Earlier, the ILC prepared 19 draft articles on the prevention of transboundary harm from hazardous activities, which it recommended should take the form of a convention. Last year the ILC completed a set of draft principles on the allocation of loss from transboundary harm from hazardous activities and requested responses from governments. END NOTE.)

¶4. Most delegations said more thought should be given to the issue of transboundary harm and the final form of the draft articles and principles. Japan stated that the principles on

USUN NEW Y 00000968 002 OF 003

allocation of loss offered a good model, but they should be left in their present form until more State practice could be observed. Austria said it was too early to discuss a convention and suggested the Committee revisit the matter in three to five years. Pakistan raised concerns about the scope of a possible convention. Malaysia argued that the draft principles were never intended to serve as the basis for a convention, but were written as guidelines for States. China said both sets of articles should be attached to a General Assembly resolution or declaration to serve as a recommendation for States.

¶5. On the other hand, Argentina and Venezuela argued for the negotiation of a convention, stating that a convention would contribute to the development of international law and serve as a guide for developing national legislation.

-----  
Responsibility of States  
-----

¶6. After the debate on transboundary harm, 29 delegations delivered statements on the responsibility of States for internationally wrongful acts: Australia (on behalf of Canada, Australia and New Zealand (CANZ)); Finland (on behalf of Denmark, Iceland, Norway and Sweden); Libya; India; Portugal; Cuba; Guatemala; Mexico; China; Germany; Austria; Poland; Chile; Malaysia; Korea; Greece; Pakistan; the United States; France; Cyprus; the United Kingdom; Italy; Japan; the Russian Federation; Ethiopia; Nigeria; Venezuela; and Sierra Leone.

¶7. Many delegations acknowledged the great amount of time and effort the ILC had invested in the draft articles. However, delegations were divided on whether or not to negotiate a convention. Fifteen representatives opposed negotiating a convention, arguing that doing so could undermine the articles by revisiting issues that took the ILC years to reach consensus. Germany cautioned that, although a convention would carry more legal weight, a convention ratified by a small number of States would have significantly less practical relevance than the articles in their present form. The UK, Spain, and Austria shared Germany's concerns. Nigeria and Sierra Leone noted that there was no urgent need

to conclude a convention as the articles were already in use as guidelines by States and considered authoritative references. Japan suggested the Committee allow more time to observe State practice and reconsider the matter at a later date. China and Korea also suggested revisiting the need for a convention after further consideration of the draft articles.

USUN NEW Y 00000968 003 OF 003

18. Twelve delegations supported a convention. Portugal said the time was "ripe" for the codification of the ILC's "most important" set of draft articles. Furthermore, the draft articles on State responsibility should constitute the "Third Pillar" of the international legal order, alongside the UN Charter and the Law of Treaties in the 1969 Vienna Convention, Portugal argued. As to the adoption of a convention, France said "the authority of international law was at stake." Libya said codifying the draft articles was in the interest of the harmonization of international law and potential differences should not be an excuse for backing away from a convention. Cyprus called for a conference on State responsibility at the earliest opportunity and said that "political will" was all that stood in the way of a final convention on the matter.  
Khalilzad